IN THE HIGH COURT OF DELHI

Crl.M.C. No.1200/2003

Roshal Lal Arora ..... Petitioner
! through: Mr.Ramesh Gupta.

VERSUS

$ State ..... Respondent
^ through : Mr.U.L.Watwani for the State.
None for the complainant.

% DATE OF DECISION: 01.10.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. Roshan Lal Arora prays that FIR No.286/95 under Section 406 IPC PS Greater Kailash Part-I and proceedings pending pursuant thereto be quashed.

2. Relevant facts are that Roshan Lal Arora and the complainant, Inder Wadhwa, entered into a partnership vide deed of partnership dated 22.1.1990 with the object of executing civil works on contract and project basis. The partnership was to carry on business under the name and style M/s.Oam International. As per the partnership deed the profits and losses of the firm were to be shared equally by the partners who were equally obliged to contribute equally towards the capital of the firm.

3. Gravement of the allegation against Roshan Lal Arora in the FIR is that pertaining to a contract taken by the firm from TCIL, vide cheque No.50411 dated 8.11.1994 in sum of Rs.3,45,268/- issued by TCIL, Roshan Lal Arora had opened an account with Central Bank of India showing himself as the sole proprietor of M/s.Oam International. The cheque in question was credited in the said account and the money had been misappropriated by Roshan Lal Arora. It was stated in the FIR that the partnership firm was maintaining a current account No.2035 with Punjab National Bank, Nehru Place and it was the duty of Roshan Lal Arora to have got credited the cheque in said account.

4. Undisputed position is that on 20.2.1995 Roshan Lal Arora had expressed his desire to Inder Wadhwa for dissolving the firm. It has therefore to be noted that the FIR in question was registered after some disputes had arisen between the two partners.

5. It is urged by learned counsel for Roshal Lal Arora that M/s.Oam International was unable to fulfill its contractual obligations and that on 17.8.1992, Inder Wadhwa addressed a letter to Roshan Lal Arora as under:-

> “Mr.R.L.Arora
> Project Development Associates,
> 533/ Pocket B, Sarita Vihar,
> New Delhi.
>
> Sub : Completion of balance work of cable duct.

> Dear Sir,
>
> Please refer to our discussions regarding completion of balance work of cable ducting of AB-1/90. We have mutually agreed that you will complete all the balance work with your labour and materials, and also made payments to the supplier, labour contractor, etc. Accordingly you will be entitled to receive payments for this work and be responsible for the discharging the liabilities of this work.
>
> All liabilities for material and labour on account of work already completed will be discharged by Oam International you will be making all efforts to complete the work by 31.12.1992."

6. It is urged that pursuant to the letter dated 17.8.1992, Roshan Lal Arora became liable to complete the balance work awarded to the partnership firm by TCIL. As per the said letter he was entitled to receive payment for the work and for said reason Roshan Lal Arora opened a separate account and credited the cheque received from TCIL. With reference to the statement of the account opened by Roshan Lal Arora with Central Bank of India in which Rs.3,45,268/- was credited, it was pointed out that money was withdrawn in parts over a considerable period of time and utilized for execution of the works awarded by TCIL. It has lastly been urged that authenticity of the letter dated 17.8.1992 has been verified as true by the investigating officer as recorded in the order dated 18.9.1995 when Roshan Lal Arora was granted anticipatory bail by this Court.

7. Question which arises for consideration is, whether Roshan Lal Arora has committed criminal breach of trust. This in

turn takes me into the issue, whether the cheque in question in sum of Rs.3,45,268/- received by Roshan Lal Arora from TCIL was required to be deposited in the account of the partnership firm with Punjab National Bank or not.

8. It is true that every partner of a firm has a fiduciary obligation to render true and faithful accounts to the other partners and is also obliged to use the funds and properties of the partnership for the purpose of the business of the partnership and not for personal gain.

9. But, nothing prevents a partner of a firm from agreeing that a co-partner may use a particular asset of a firm for his personal use. After all, a partnership is the result of a contract between 2 or more persons.

10. Letter dated 17.8.1992 written by the complainant to Roshan Lal Arora is a clear authorization in favour of Roshan Lal Arora to receive payments from TCIL for the balance work of cable ducting awarded to the partnership firm with obligation cast on Roshan Lal Arora to take over liability as also to execute the balance work by providing the necessary funds.

11. While granting anticipatory bail to Roshan Lal Arora and disposing of his pre-arrest bail application, order dated 18.9.1995 passed by this Court records as under:-

> “3. Before I deal with these aspects, it is considered necessary to know from the complainant if he had issued letter dated 17.8.1992 agreeing that the petitioner would be

> entitled to receive payment for the work, which was to be carried out and finally to be completed by the petitioner. IO to get this fact ascertained and report on 25.9.1995. Till then, the petitioner be not arrested. However, the petitioner shall join investigation as and when desired by the investigator. Copy of this order be given dasti to the petitioner.

12. Section 405 of the Indian Penal Code defines criminal breach of trust. It reads as under:-

> **405. Criminal breach of trust.**- Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust".

13. The essential ingredients of offence of criminal breach of trust are:- Entrustment with property or with any dominion over property; and dishonest misappropriation thereof.

14. Letter dated 17.8.1992 written by the complainant to Roshan Lal Arora negates any entrustment of any property of the partnership firm pertaining to the cable ducting work awarded by the TCIL to the firm to Roshan Lal Arora for the reason pursuant to the letter dated 17.8.1992 Roshan Lal Arora took over the liability to execute the balance cable ducting work awarded by TCIL and became entitled to receive all money payable for said work by TCIL.

15. The FIR in question is nothing but an abuse of the process of law. I accordingly quash the FIR. I also quash all consequential proceedings pending in any Court pursuant to the FIR.

16. Copy of the order be supplied dasti to learned counsel for the petitioner.

October 01, 2007 **PRADEEP NANDRAJOG, J.**
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